

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCUS R. ELLINGTON,

Plaintiff,

v.

FOX, et al.,

Defendants.

No. C 11-00287 EJD (PR)

ORDER DENYING MOTIONS FOR  
PRELIMINARY INJUNCTION;  
DENYING MOTION FOR RETURN  
OF DOCUMENTS; DIRECTING  
PLAINTIFF TO FILE OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS

(Docket Nos. 26, 33 & 36)

Plaintiff, a California inmate at the Salinas Valley State Prison in Soledad, filed a pro se civil rights complaint under 42 U.S.C. § 1983, challenging the conditions of his confinement.

Plaintiff has filed a request for emergency relief, (Docket No. 26), which the Court construes as a motion for preliminary injunction, and a motion for preliminary injunction, (Docket No. 36). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008). This standard replaces the previous tests for preliminary injunctions that had been used in the Ninth Circuit. American Trucking Association v. Los Angeles, 559

1 F.3d 1046, 1052 (9th Cir. 2009). Plaintiff's motions are DENIED because he has failed  
 2 to show that he is likely to succeed on the merits. Having concluded that Plaintiff has  
 3 failed to show a likelihood of success on the merits, this Court need not consider whether  
 4 the plaintiff would suffer irreparable injury. See Guzman v. Shewry, 552F.3d 941, 948  
 5 (9th Cir. 2009).

6 Defendants filed a motion to revoke Plaintiff's in forma pauperis status and to  
 7 dismiss the case on June 17, 2011. (Docket No. 30.) Although the Court suspended  
 8 briefing on the original complaint, (see Docket No. 27 at 3), Plaintiff's pauper status is a  
 9 preliminary matter and is properly challenged early in the proceedings. Accordingly,  
 10 briefing shall proceed on Defendants' motion. Plaintiff is directed to file opposition to  
 11 Defendants' motion **no later than thirty (30) days** from the date this order is filed.  
 12 Defendants' reply shall be filed **within fifteen (15) days** after Plaintiff's opposition is  
 13 filed.

14 Plaintiff has filed a motion "for return of submitted declarations, motions,  
 15 supplemental complains and filing[]." (Docket No. 36.) The motion is DENIED without  
 16 prejudice. Plaintiff is directed to identify which specific documents he wishes to have  
 17 returned to him. The Clerk shall provide Plaintiff with a copy of the docket of Case No.  
 18 11-01507 JW (PR), from which Plaintiff may identify the desired documents in a renewed  
 19 motion.

20 This order terminates Docket Nos. 26, 33 and 36.

21  
 22 DATED: June 23, 2011

  
 EDWARD J. DAVILA  
 United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MARCUS R. ELLINGTON,  
Plaintiff,

Case Number: CV11-00287 EJD

**CERTIFICATE OF SERVICE**

v.

FOX, et al.,

Defendants.

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 6/24/2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Marcus R. Ellington E-44837  
CSP-Salinas Valley State Prison  
P.O. Box 1050  
Soledad, CA 93960

Dated: 6/24/2011

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk